

Federal Emergency Management Agency

§ 206.434

profit organizations, or Indian tribal government as outlined in § 206.433. Indian tribal governments acting as a subgrantee are accountable to the State grantee.

[67 FR 8852, Feb. 26, 2002]

§ 206.432 Federal grant assistance.

(a) *General.* This section describes the extent of Federal funding available under the State's grant, as well as limitations and special procedures applicable to each.

(b) *Amounts of assistance.* The total of Federal assistance under this subpart shall not exceed either 15 or 20 percent of the total estimated Federal assistance (excluding administrative costs) provided for a major disaster under 42 U.S.C. 5170b, 5172, 5173, 5174, 5177, 5178, 5183, and 5201 as follows:

(1) *Fifteen (15) percent.* Effective November 1, 2004, a State with an approved Standard State Mitigation Plan, which meets the requirements outlined in 44 CFR 201.4, shall be eligible for assistance under the HMGP not to exceed 15 percent of the total estimated Federal assistance described in this paragraph. Until that date, existing, FEMA approved State Mitigation Plans will be accepted.

(2) *Twenty (20) percent.* A State with an approved Enhanced State Mitigation Plan, in effect prior to the disaster declaration, which meets the requirements outlined in 44 CFR 201.5 shall be eligible for assistance under the HMGP not to exceed 20 percent of the total estimated Federal assistance described in this paragraph.

(3) The estimates of Federal assistance under this paragraph (b) shall be based on the Regional Director's estimate of all eligible costs, actual grants, and appropriate mission assignments.

(c) *Cost sharing.* All mitigation measures approved under the State's grant will be subject to the cost sharing provisions established in the FEMA-State Agreement. FEMA may contribute up to 75 percent of the cost of measures approved for funding under the Hazard Mitigation Grant Program for major disasters declared on or after June 10, 1993. FEMA may contribute up to 50 percent of the cost of measures approved for funding under the Hazard

Mitigation Grant Program for major disasters declared before June 10, 1993. The nonFederal share may exceed the Federal share. FEMA will not contribute to costs above the Federally approved estimate.

[55 FR 35537, Aug. 30, 1990, as amended at 59 FR 24356, May 11, 1994; 67 FR 8853, Feb. 26, 2002; 67 FR 61515, Oct. 1, 2002]

§ 206.433 State responsibilities.

(a) *Grantee.* The State will be the Grantee to which funds are awarded and will be accountable for the use of those funds. There may be subgrantees within the State government.

(b) *Priorities.* The State will determine priorities for funding. This determination must be made in conformance with § 206.435.

(c) *Hazard Mitigation Officer.* The State must appoint a Hazard Mitigation Officer, as required under 44 CFR part 206 subpart M, who serves as the responsible individual for all matters related to the Hazard Mitigation Grant Program.

(d) *Administrative plan.* The State must have an approved administrative plan for the Hazard Mitigation Grant Program in conformance with § 206.437.

§ 206.434 Eligibility.

(a) *Applicants.* The following are eligible to apply for the Hazard Mitigation Program Grant:

(1) State and local governments;

(2) Private non-profit organizations or institutions that own or operate a private non-profit facility as defined in § 206.221(e);

(3) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska native corporations with ownership vested in private individuals.

(b) *Plan requirement.* (1) For all disasters declared on or after November 1, 2004, local and tribal government applicants for subgrants must have an approved local mitigation plan in accordance with 44 CFR 201.6 prior to receipt of HMGP subgrant funding. Until November 1, 2004, local mitigation plans may be developed concurrent with the implementation of subgrants.

(2) Regional Directors may grant an exception to this requirement in extraordinary circumstances, such as in a

small and impoverished community when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

(c) *Minimum project criteria.* To be eligible for the Hazard Mitigation Grant Program, a project must:

(1) Be in conformance with the State Mitigation Plan and Local Mitigation Plan approved under 44 CFR part 201;

(2) Have a beneficial impact upon the designated disaster area, whether or not located in the designated area;

(3) Be in conformance with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, Environmental Considerations;

(4) Solve a problem independently or constitute a functional portion of a solution where there is assurance that the project as a whole will be completed. Projects that merely identify or analyze hazards or problems are not eligible;

(5) Be cost-effective and substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster. The grantee must demonstrate this by documenting that the project:

(i) Addresses a problem that has been repetitive, or a problem that poses a significant risk to public health and safety if left unsolved,

(ii) Will not cost more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if future disasters were to occur. Both costs and benefits will be computed on a net present value basis,

(iii) Has been determined to be the most practical, effective, and environmentally sound alternative after consideration of a range of options,

(iv) Contributes, to the extent practicable, to a long-term solution to the problem it is intended to address,

(v) Considers long-term changes to the areas and entities it protects, and has manageable future maintenance and modification requirements.

(d) *Eligible activities.* (1) *Planning.* Up to 7% of the State's HMGP grant may

be used to develop State, tribal and/or local mitigation plans to meet the planning criteria outlined in 44 CFR part 201.

(2) *Types of projects.* Projects may be of any nature that will result in protection to public or private property. Eligible projects include, but are not limited to:

(i) Structural hazard control or protection projects;

(ii) Construction activities that will result in protection from hazards;

(iii) Retrofitting of facilities;

(iv) Property acquisition or relocation, as defined in paragraph (e) of this section;

(v) Development of State or local mitigation standards;

(vi) Development of comprehensive mitigation programs with implementation as an essential component;

(vii) Development or improvement of warning systems.

(e) *Property acquisition and relocation requirements.* A project involving property acquisition or the relocation of structures and individuals is eligible for assistance only if the applicant enters an agreement with the FEMA Regional Director that provides assurances that:

(1) The following restrictive covenants shall be conveyed in the deed to any property acquired, accepted, or from which structures are removed (hereafter called in section (d) the property):

(i) The property shall be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices; and

(ii) No new structure(s) will be built on the property except as indicated below:

(A) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

(B) A rest room; or

(C) A structure that is compatible with open space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the Director approves in writing before the construction of the structure begins.

(iii) After completion of the project, no application for additional disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance.

(2) In general, allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved, previous parking lots, and buffer zones.

(3) Any structures built on the property according to paragraph (d)(1) of this section, shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

(f) *Inapplicability of the Uniform Relocation Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 does not apply to real property acquisition projects which meet the criteria identified below:

(1) The project provides for the purchase of property damaged by the major, widespread flooding in the States of Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin during 1993;

(2) It provides for such purchase solely as a result of such flooding;

(3) It is carried out by or through a State or unit of general local government;

(4) The purchasing agency (grantee or subgrantee) notifies all potential property owners in writing that it will not use its power of eminent domain to acquire the properties if a voluntary agreement is not reached;

(5) The project is being assisted with amounts made available for:

(i) Disaster relief by the Federal Emergency Management Agency; or

(ii) By other Federal financial assistance programs.

(g) *Duplication of programs.* Section 404 funds cannot be used as a substitute or replacement to fund projects or programs that are available under other Federal authorities, except under lim-

ited circumstances in which there are extraordinary threats to lives, public health or safety or improved property.

(h) *Packaging of programs.* Section 404 funds may be packaged or used in combination with other Federal, State, local, or private funding sources when appropriate to develop a comprehensive mitigation solution, though section 404 funds cannot be used as a match for other Federal funds.

[55 FR 35537, Aug. 30, 1990, as amended at 59 FR 24356, May 11, 1994; 67 FR 8853, Feb. 26, 2002; 67 FR 61515, Oct. 1, 2002]

§ 206.435 Project identification and selection criteria.

(a) *Identification.* It is the State's responsibility to identify and select eligible hazard mitigation projects. All funded projects must be consistent with the State Mitigation Plan. Hazard Mitigation projects shall be identified and prioritized through the State, Indian tribal, and local planning process.

(b) *Selection.* The State will establish procedures and priorities for the selection of mitigation measures. At a minimum the criteria must be consistent with the criteria stated in § 206.434(b) and include:

(1) Measures that best fit within an overall plan for development and/or hazard mitigation in the community, disaster area, or State;

(2) Measures that, if not taken, will have a severe detrimental impact on the applicant, such as potential loss of life, loss of essential services, damage to critical facilities, or economic hardship on the community;

(3) Measures that have the greatest potential impact on reducing future disaster losses;

(c) *Other considerations.* In addition to the selection criteria noted above, consideration should be given to measures that are designed to accomplish multiple objectives including damage reduction, environmental enhancement, and economic recovery, when appropriate.

[55 FR 35537, Aug. 30, 1990, as amended at 66 FR 8853, Feb. 26, 2002]

§ 206.436 Application procedures.

(a) *General.* This section describes the procedures to be used by the grantee in submitting an application for HMGP